

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA, *et al.*,

Plaintiffs,

v.

AMERICAN AIRLINES GROUP INC.
and
JETBLUE AIRWAYS CORPORATION,

Defendants.

Civil Action No.: 1:21-cv-11558-LTS

**[PROPOSED] ORDER GOVERNING EXPERT WITNESS DISCLOSURES AND
DEPOSITIONS**

Consistent with Paragraph 17 of the Scheduling and Case Management Order, ECF No. 76, the Parties have met and conferred and agreed to the following protocol for expert witness disclosures and depositions.

1. **Definitions.** For purposes of this Order Governing Expert Witness Disclosures and Depositions, the Definitions listed in Paragraph 5 of the Scheduling and Case Management Order, ECF No. 76, apply.

2. **Expert Disclosures.** Expert disclosures, including each side's expert reports, must comply with the requirements of Federal Rule of Civil Procedure 26(a)(2) and 26(b)(4), except as modified by this paragraph.

(a) Neither side must preserve or disclose, including in expert deposition testimony, at any hearing, or at trial, the following documents or information:

- (i) any form of oral or written communications, correspondence, or work product not relied upon by the expert in forming any opinions in his or her final report:
 - (A) between any Plaintiff's or any Defendant's counsel and the Plaintiffs' or the Defendants' own testifying or non-testifying expert(s);
 - (B) between any agent or employee of Plaintiff's or Defendant's counsel and the Plaintiffs' or the Defendants' own testifying or non-testifying expert(s);
 - (C) between testifying and non-testifying experts;
 - (D) between non-testifying experts; or
 - (E) between testifying experts;
- (ii) any form of oral or written communications, correspondence, or work product not relied upon by the expert in forming any opinions in his or her final report between experts and any persons assisting the expert;
- (iii) the expert's notes, except for notes of interviews participated in or conducted by the expert if the expert relied upon such notes in forming any opinions in his or her final report;
- (iv) drafts of expert reports, affidavits, or declarations; and
- (v) data formulations, data runs, data analyses, or any database-related operations not relied upon by the expert in forming any opinions in his or her final report.

(b) The Parties agree that the following materials will be disclosed in accordance with the timing provisions in the Scheduling and Case Management Order, ECF No. 76:

- (i) all final reports;
- (ii) a list by Bates number of all documents relied upon by the testifying expert(s) in forming any opinions in his or her final reports;
- (iii) copies of any materials relied upon by the expert not previously produced that are not readily available publicly;
- (iv) a list of all publications authored by the expert in the previous 10 years and, upon request, copies of any such (or relevant portions of such) publications;
- (v) a list of all other cases in which, during the previous 4 years, the expert testified at trial or by deposition, including tribunal and case number; and
- (vi) for all calculations appearing in the final reports, all data and programs underlying the calculations (including all programs and codes necessary to replicate the calculations from the initial (“raw”) data files and the intermediate working-data files that are generated from the raw data files and used in performing the calculations appearing in the final report) and a written explanation of why any observations in the raw data were either excluded from the calculations or modified when used in the calculations (“Backup Materials”).

The Court's schedule allows for Plaintiffs' Initial Expert Report(s), Defendants' Rebuttal Expert Report(s), and Plaintiffs' Reply Expert Report(s). *See* ECF No. 76 at 2. Any additional reports may not be served without leave of court, except as agreed by the parties.

3. **Expert Depositions.** Each expert will be deposed for only one (7-hour) day, with all 7 hours reserved for the side noticing the expert's deposition. Depositions of each side's experts will be conducted only after disclosure of all expert reports and all of the materials identified in paragraph 21(b) of this Order for all of that side's experts. To the extent that expert depositions must be conducted virtually, any order entered by the Court governing fact depositions will apply, except as agreed by the parties.

SO ORDERED:

LEO T. SOROKIN
United States District Judge

Dated: _____, 2022